

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

EAGLE ROCK ENTERPRISES, INC.
Respondent

Case Nos.: I-00-10359
I-00-10381

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

I. Introduction

On September 5, 2000, the Government served a Notice of Infraction (No. 00-10359) on Respondent Eagle Rock Enterprises, Inc., alleging a violation of 20 DCMR 900.1, which prohibits, with certain exceptions, motor vehicles from idling their engines for more than three minutes while parked, stopped or standing. The Notice of Infraction alleged that the violation occurred on September 1, 2000 in the 300 block of Morse Street N.E., and sought a fine of \$500.00.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Code § 6-2715). Accordingly, on October 18, 2000, this administrative court issued an order

finding Respondent in default, assessing the statutory penalty of \$500 authorized by D.C. Code § 6-2704(a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government then served a second Notice of Infraction (No. 00-10381) on October 31, 2000. Respondent also did not answer that Notice within twenty days of service. Accordingly, on December 22, 2000, a Final Notice of Default was issued, finding Respondent in default on the second Notice of Infraction and assessing total penalties of \$1,000.00 pursuant to D.C. Code §§ 6-2704(a)(2)(A) and 6-2704(a)(2)(B). The Final Notice of Default also set January 17, 2001 as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at that hearing to contest liability, fines, penalties or fees. Copies of both the first and second Notices of Infraction were attached to the Final Notice of Default.

On January 17, 2001, the Government, represented by Jacques P. Lerner, Esq., appeared for the hearing. There was no appearance for the Respondent. Based upon the testimony at the hearing, my evaluation of the credibility of the Government's witness and the entire record in this case, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

1. On September 1, 2000, Neil Williams, an inspector employed by the Department of Health, observed a diesel-powered truck owned by Respondent parked in the 300 block of Morse Street N.E. with its engine running. The engine idled for at least four minutes, between 12:44 PM and 12:48 PM.

2. Mr. Williams copied the identifying information on the truck and later determined from U.S. Department of Transportation records that Respondent Eagle Rock Enterprises, Inc. owned the truck.
3. The Notices of Infraction were served upon Respondent by certified mail on September 5, 2000 and October 31, 2000, as evidenced by the certificates of service signed by the Government's representatives.
4. This administrative court's orders of October 18, 2000 and December 22, 2000 were sent to Respondent by first class mail and were received by Respondent, as evidenced by the delivery confirmations contained in the record.
5. There is no evidence of the reasons for Respondent's failure to answer the Notices of Infraction.

III. Conclusions of Law

1. Respondent had adequate notice of both the charges and the hearing date as mandated by the Due Process Clause and by applicable statutes. The Notices of Infraction were sent to Respondent's business address as determined from government records. The record also shows that Respondent actually received the orders of October 18 and December 22, which were sent to that address. This is sufficient to demonstrate that Respondent received proper notice. *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).

2. Because Respondent's truck idled its engine for more than three minutes while parked, it violated 20 DCMR 900.1. Respondent is liable for a fine of \$500.00 for that violation. *See* 16 DCMR 3224.3(aaa), as added by the Motor Vehicle Excessive Idling Fine Increase Amendment Act of 1999, D.C. Law 13-35 (Effective October 7, 1999); 46 D.C. Reg. 8699 (October 29, 1999); 46 D.C. Reg. 6017 (July 23, 1999).
3. The Civil Infractions Act, D.C. Code §§ 6-2712(f) and 6-2715, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party can not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Code §§ 6-2704(a)(2)(A), 6-2712(f). If a recipient fails to answer a second Notice of Infraction without good cause, the penalty doubles. D.C. Code §§ 6-2704(a)(2)(B), 6-2712(f). Because Respondent introduced no evidence of the reasons for its failure to answer the Notices of Infraction, there is no basis for concluding that it had good cause for its failure to answer the Notices of Infraction, and no basis to suspend or reduce the statutory penalty of \$1,000.00.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____
day of _____, 2001:

ORDERED, that Respondent shall pay a total of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Code § 6-2713(i), and the sealing of Respondent's business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ **6/8/01**

John P. Dean
Administrative Judge